
**Public Safety & Emergency
Preparedness Committee**

HB 2070

Brief Description: Concerning exceptional sentences.

Sponsors: Representatives O'Brien, Goodman and Pearson.

Brief Summary of Bill

- Grants the superior court the authority to empanel a jury in certain new trials or sentencing hearings for purposes of imposing exceptional sentences above the standard range.

Hearing Date: 2/21/07

Staff: Jim Morishima (786-7191).

Background:

When a person is convicted of a crime, a court must generally sentence the offender within a standard range determined by the person's criminal history and the seriousness level of the crime. Prior to 2004, a court could sentence an offender above the standard range if it found, by a preponderance of the evidence, that aggravating circumstances existed. This type of sentence is known as an "exceptional sentence." In 2004, the United States Supreme Court ruled that sentencing an offender above the standard range in this manner is unconstitutional. *Blakely v. Washington*, 542 U.S. 296 (2004). Under the *Blakely* decision, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved to a jury beyond a reasonable doubt.

In 2005, the Legislature responded to the *Blakely* decision by changing the manner in which exceptional sentences are imposed. Under this new procedure, the prosecutor must provide notice that he or she is seeking an exceptional sentence above the standard range at any time prior to trial or the entry of a guilty plea as long as the substantial rights of the defendant are not prejudiced. The prosecutor must then prove the aggravating circumstances justifying the exceptional sentence to a jury (or to the judge if the jury is waived) beyond a reasonable doubt.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2007, the Washington State Supreme Court ruled that changes the Legislature made in 2005 do not apply to cases where trials have already begun or guilty pleas have already been entered prior to the effective date of the legislation (April 15, 2005). *State v. Pillatos*, 2007 Wash. LEXIS 62 (2007). The court in *Pillatos* also held that courts do not have the inherent power to empanel sentencing juries; i.e., the courts must have statutory authority to do so.

Summary of Bill:

In any case where an exceptional sentence above the standard range was imposed prior to April 15, 2005, and where a new trial or new sentencing hearing is required, the superior court has the authority, at the new trial or sentencing hearing, to empanel a jury to consider any aggravating circumstances that were relied upon by the court in imposing the previous sentence.

Appropriation: None.

Fiscal Note: Requested on February 16, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.